

SUPREME COURT OF THE UNITED STATES
October Term, 1976

No. 77-197

DONALD SCHANBARGER,

Petitioner,

V

MARINE MIDLAND BANK-CENTRAL (Executor of Harriet Hendry Estate),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION OF THE FOURTH DEPARTMENT

12/10/16

DONALD SCHANBARGER
Salem, New York 12865

June 1, 1977

INDEX

1 11 2	page
Opinion Below	1
Jurisdiction	2 & 3
Question Presented	3 & 4
Issues	4 & 5
Statement of Case	5 & 6
Reason To Grant Writ	6
Conclusion	6
Surrogate's Court opi	nion Al - Al2
Surrogate's Decree	A13 - A22
AD Affirmance Order	A23 - A24
Denied pemission to a	ppeal to
N.Y.S. Court of Appea	ls Order A25 - A26
Cases cited:	
City Bank v Cannor	, 349 NYS24 870 5
Meinhard v Salmon,	249 NY 458 5
Statute: 28 U.S.C. 12	57 2
U.S. Constitution:	Article 3 3
	Article 6 3

THORK

. Coldion, Belcy with that will Destrocard northest 5 8 8 South the the Care atiw Chero of schaff notaulone" SIA - IA Curregate's Court octation so trad a 'elegan rud STA - SIA Tel no esmantilla GA Man - SSA of tragge of notarting being T.Y.B. Court of Appeals Order A.Y.C. Cars of bod dicy Tank v Cannun, 349 Wille all Meanbard v Salmon, 249 NY 458 Statules 23 U.S.C. 1257.

E ololink

d sicilian

Ass. Incd For a tomot, that

IN THE

SUPREME COURT OF THE UNITED STATES October Term, 1976

No.	

DONALD SCHANBARGER,

Petitioner,

V

MARINE MIDLAND BANK-CENTRAL (Executor of Harriet Hendry Estate),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION OF THE FOURTH DEPARTMENT

The petitioner Donald Schanbarger respectfully prays that a writ of certiorari issue to review the Order of the New York State Supreme Court, Appellate Division of the Fourth Department entered in its clerk's office on December 10, 1976.

OPINION BELOW

Opinion of Herkimer County Surrogate's Court of New York State appears in the Appendex pp 1 - 10 hereto. There is no opinion by the Appellate Division of the New York State Supreme Court.

JURISDICTION

CHECKLER STORY TANDE

typyelete 7 tipe's told speak piletings .

This Court's jurisdiction is claimed under 28 U.S.C. 1257 (3). The December 10, 1976 Order (A 23&24) of the New York State Supreme Court, Appellate Division of the Fourth Department affirmed the April 23, 1976 Decree (A 13-22) of Herkimer County Surrogate's Court. The aforsaid Order of the Appellate Division was mailed to the Petitioner on February 2, 1977. On February 28, 1977 Petitioner made timely motion to the New York State Court of Appeals for leave to Appeal which was denied by Order (A 25&26) of March 29, 1977,

thereby exhausting petitioner's N.Y.S. judicial review of the damages herein with the 14th Amendment question below on this page raised in all courts, which was raised for the first time at the court of first instance in objections to account with assurted Articials 3. Section 2, and 6 of the federal Constitution.

Statutor of Barblete County Surrogate's

Assender up 1 - 10 herezo. There is no

are doubtly for the all the lateral and the

Carry through the land for the court made there.

QUESTION PRESENTED

Whether a state Court that fails to compell a fiduciary under its supervision to make good lost purchasing power of funds under their control that could had been distributed to legatee before lost value and damages incured for failure to distribute, violates the prohibited state conduct, equal protection and due process clauses of the 14th amendment of the federal Constitution, when predictable inflation runs over 10% and the cost to a

thereby exhausting policions' N.T. 5. and we have a second rest for the track Larry half and

legatee to get a loan to have funds that could and should had been distributed to legatees for investment and/or enjoyment could run as much as 25%?

ISSUES

- (1) Whether a bank executor taking around 2 years to move for settlement of account of a money estate of which part was self lent, is entitled to any fees and/or expenses as as executor, and should be surcharged damages to purchasing power of an estate due to delay in making distribution?
- (2) Whether a legatee's failure to promptly move for accounting after 6 mos. after probation of a Will is constructive permission for an executor to retain control over estate funds, and/or is a bar to surcharge for loss do to delay in distribution of funds, when a legatee's move for

accounting has around 50% cost.

Departure the Law terrest and enclosed

District a market and one of the continued of the

Involved I tresult a Set even of some a

tion and their stricts to elected decision of the

In case for annual to the disease to the arms.

steading for an example to calls a maintable

trok of funds, when a leaster's move for

(3) Meinhard v Salmon, 249 N.Y. 458 punctile of an honor, and City Bank v Cannon, 349 NYS2d 870 divided loyalty.

STATEMENT OF THE CASE

The proceedings of the case is for Judicial Settlement of executor's account. for results to distribute total funds to residuary legatees. Objections to account are: (a) Lost purchasing power of funds thru failure to make distribution of funds that executor self lent, (b) Payment of taxes of income with reduced purchasing power, (c) Administration expense should be based on funds of proper distribution, (d) Accounting & commissions should be denied because of delayed distribution of funds self lent, (e) Accounting not index to 1/1/1974, (g) Accounting fails to as sign all claim of the estate to petitioner

for the use of legatees, (f) 25% interest surcharge per yr. until distribution for lost investment & enjoyment opportunities.

REASON TO GRANT WRIT

To establish actual remedy not governed by the doctrine of waste, against the long standing practice of surrogate courts permitting executors (banks) and lawyers working over estates to their interest which causes delay in distribution of an estate to the damage of the legatee's joy and purchasing power.

CONCLUSION

For that reason, a writ of certiorary should issue to review the Order, to the N.Y.S. Supreme Court Appellate Division, Fourth Department.

Submitted,

DONALD SCHANBARGER

June 1, 1977

CHARLE OF STATE STATE SHAPE OF BUILDING

Petitioner Pro Se

In the matter of the Judicial Settlement
of the account of Marine Midland BankCentral as Executor of the Estate of
HARRIET I. HENDRY,

a/k/a Harriet E. Hendry,

Deceased.

SCHNEIDER, S .:

Objections to the account of the Marine Bank-Central, as Executor of the Estate of the above named decedent, were filed by Donald Schanbarger, one of the residuary legatees under the Last Will and Testament of the above named testator. Upon the return date of the citation said Donald Schanbarger appealed in person and was advised by the Court of the provisions of SCPA 2211, and offered to adjourn the proceedings should he desire to examine the fiduciary under oath in reference to its

The state of the s

and and the contract of the state of the state of

provided the contract to the contract

topic attigge to the E. I. to the same and anything of

A SECURITION OF THE PROPERTY O

SOTETO E THE COMMENT REPORT OF PERSONS OF

THE THE PERSON OF THE PERSON O

efficient at any consistency of the second and a second

THE TRUNC OF MORAGIN -

account and the objections thereto filed by him. The objectant stated he did not wish to examine the fiduciary nor did he desire an adjournment, and stated he wished to proceed and to be given an opportunity to be heard in reference to the objections he had filed, whereupon the Court permitted him to proceed with his argument. In so doing the Court requested that he discuss each objection separately and in the order set forth in the objections.

In reply to abjection "A", the attorney for the fiduciary stated that he believed the decedent did own an interest in some real property which was of very little value. The objectant then stated he really was not interested in the real property objection and that he would go ahead with the other objections. The Court, however, instructed the fiduciary's attorney

Street and a supplemental and a

The state of the s

to file an answer in reference to the interest of the testator in any real property. Such an answere was filed, which shows that the testator's husband, at the time of his death, owned a lot in the Town of Forestport, appraised for the sum of two hundred fifty dollars. It further appears that the testator's husband's distributees were a son by a previous marriage and the testator herein. The whereabouts of the son is unknown. The answer further points out that the cost of legal proceedings to permit the sale of said property would far exceed the amount for which the property could be sold.

2 1

sent property was a set of the street first

-bry fitting the second of the second fitting

the state of the s

The title to all real property of a decedent that has not been disposed of by Will vest immediately upon his death in his distributees, (Matter of Roberts, 414 M.Y. 369; Kingsland v. Murray, 133 N.Y.

170), subject, of course, to the rights of a fiduciary under EPTL 11-1.1. Accordingly, the real property which Delbert Hendry owned at the time of his death vested in his wife, the testator herein, and his son, approximately twentyeight years before the decedent's death. property was not income producing and had the fiduciary herein exercised any control thereover, it could not have disposed of the same because of the outstanding interest therein in the decedent's husband's son. Not having exercised any control over the same nor received any income therefrom the fiduciary was not required to include the interest of the decedent in said real property in Schedule A of its account, since the title had already vested in those entitled thereto and there remained nothing for the fiduciary to do in

the of animathon of reward on other or

of Forestport, commode to the sea of

senence that the Seasable 's numbers' and

The state of the second of the second

the dispersion of the state of

reference thereto. The objection to Schedule A of the fiduciary's account is therefore dismissed.

inedy, the year property watch lelbers

thereover, it could not byen dispused of

the same breaking of the outstand same add

a'bandand a'tash and al alasedy Jes

son, Not having shorted any control

tangents out in turnetal act alginal of

Objection "2" is based upon the presumed loss of income by reason of said executor "self lending" the estate assets at a lower rate of interest than might be realized by investing the assets in United States Treasury bills.

Schedule A of the account sets forth the estate assets received by the executor. They consisted of two bank accounts and Series E U.S. Savings Bonds. Schedule A-2 of the account shows that the total income received was \$2411.47, representing an over-all earning of approximately eight percent, much greater than would have been received had the original assets been retained. The executor's reply to the objections in reference to the Certificates

of Deposit in which the funds were invested ed states, "The interest rate during the period of time these funds were invested fluctuated in accordance with the investment market but during a period of time the interest rate yield was 11.45%."

Schedule A of the finiciary's economic is-

things you come that is "2" self-selfe

EPTL 11-1.1(b)(3) empowers a fiduciary to invest and reinvest property of the estate "under the provisions of the Will . . . or as otherwise provided by law." The fiduciary's reply states that "part of the estate funds were invested in Certificates of Deposit of Marine Midland Bank - Central", and that such deposits were insured and paid the same interest rate as certificates in "other banks or financial intitutions in the area," and were invested "together with other trust funds from other estates and fiduciary accounts. . . and this gave a larger

yield on interest income than the ordinary investment."

ATTEMPT TO WALLEY THE THE THE THEFT THE

alternal and return to the new his following

mile to be a state of the same and

Changery and the formation and

The Courts have long recognized that "the advantages that are frequently to be secured by combining trust funds to make a larg and more satisfactory investment than can be made of the funds of one trust without combination are of sufficient importance and value to the several trust funds to overcome any disadvantage that may arise from the fact that several owners of the investment may thereafter differ in the manner of handling the same. Trust funds have been from time to time combined for investment with satisfactory results and the practice is generally rec. ognized as proper for a trustee. (11 Ruling Case Law, 143; Barry v. Lambert, 98 N.Y. 300)". (Above cited in Matter of Union Trust Co. (Hoffman Estate), 219 N.Y.

514, 518) (1916). It would appear that "self dealing" is condemned only when it is shown that it is improper or improvidently done resulting in a loss to those interested therein. (Matter of Bausch, 280 A.D. 482).

The burden of establishing derelection of duty as a basis for a surcharge is on the objectant. (Re Weinberg's Will, (Sur) 69 N.Y.S. 2d 748). No evidence was presented that the rate of interest received by the executor from its investment of the estate assets was "at a lower rate than U.S. Treasury bills and does not maintain purchasing power of principle through inflation, when partial distribution to legatees for their investment or enjoyment should have issued." Schedule A-2, notwith. standing objectant's statement to the contrary, does, in fact represent the true

fund to supreme men discovering of the

income received from the investment of the estate assets. The objectant's statement to the contrary is based upon pure speculation, conjecture and surmise.

"I need then no method at "mailing thee"

And the state of t

secure to the three lines of the section

The fiduciary, under the law, is not required to make partial distribution of the assets of the estate unless so direct. ed by the testator's Will, or pursuant to order of the Court. SCPA 2102(5) gives to any beneficiary of an estate the right to commence a proceeding for the payment of "all or part of any testamentary provision." SCPA 2205 also gives to any person interested in an estate the right to bring a proceeding to require a fiduciary to file an intermediate or final account within such time and in such manner as directed by the Court. The objectant did not avail himself of either of those two rights, and should not now be permitted

to object to something he himself could had prevented or accomplised had he desired to under the above provisions of the law. Under the circumstances, number "2" of the objections is dismissed.

ALDER OF THE REPORT AND ALLEY AND ARREST PARTY.

Tall or part a my ten once the fire

ment of taxes on income when the estate lost purchasing power through foreseeable inflation during the stwardship of the said executor." The payment of taxes on income received by a fiduciary is mandatory under the law, and is a proper administration expense. The argument that the estate "lost purchasing power thru foreseeable inflation" does not constitute a valid objection to the payment of income taxes on income received. Objection numbered "3" is dismissed.

The Court does not believe there is any merit to objection "4" and therefore dis-

misses the same.

Scatt purchasing news there as for the said

tayons us crainwall a go baytues amount

one to be to pay with the sold to below as

You is no or evaluation and from bed't

with an also sell that "A" most builde as always

In reference to objection "5", the objectant has failed to establish dereliction of duty or loss to the estate occasioned by any acts of the fiduciary, Again, the objectant has submitted no facts or proof, and bases his assertions warranting a surcharge upon an arbitrary interest rate selected by him and objections "1" through "4" discussed above. Objection "5" is, therefore, dismissed. The cases cited by the objectant have no application in the present situation.

The Court construes objection "6" as an attempt on the part of the objectant to obtain control of the estate assets in order to manipulate the same according to his whim and desire. He will, of course, be paid on this accounting the share of the astate which he is entitled to receive

under the testator's Will. The other residuary legatee also is entitled to and will receive the share which is due her under the testator's Will. Accordingly, no reason exists for the objectant's request. Also, there is no provision of law which would permit the Court to grant the objectant what he requests. Objection "6" is denied.

It is believed that the remaining ob-

It is believed that the remaining objections are, in part, a reiteration of some of the preceding objections and need not be further discussed, except to say, the Court is of the opinion that neither the objectant nor the other residuary legatee have been denied any constitutional rights. Objections "7" and "9" are dismissed.

Dated, August 25, 1975.

/s/ Albert W. Schneider Surrogate

DFIRIOR LI A window the name. times by any gots of the flauctory. Letter, from the grantisms on more extendents a through ' ' discussed soot o ' ' Mayordor "5" in therefore, similard, "I'v or ear and the lifts on every notice on and we bester and the dispens and all where the same of the same alatto

manual and pullimentary plat at \$125 at

under the restator's Will. You older

has al bulitane at bulk savaget translage.

will esserve the stars sales in due the

a light bare A . If the a content of the salar

no reason catala for the objectant's --

in nathivery to be present, refa Justice in

the state of the s

otherton artimophy on term to be the other

.002.000.00

to invitation at the or are accountable

Date to the American continue on the Landson

, the of least, investments out that , or door

6 ---

wheat had a supple and the transfer the sets

COTTAGE STORY AND DESCRIPTION OF STREET

I statute. Colections """ and "" and

.heesimali

Darrel, Acquet 25, 1976

Ast Albert D. Brontidor

STATE OF THE PARTY OF THE PARTY

SURROGATE'S COURT - COUNTY OF HERKIMER

In the Matter of the Judicial Settlement of the Account of Marine Midland Bank-

Central as Executor of the Estate of

HARRIET I. HENDRY a/k/a

Harriet E. Hendry,

deceased.

File No. 52093

ecutor of the Estate of Harriet I. Hendry, late of the Village of Ilion, in Herkimer County, New York, deceased, having heretofore presented to this Court the account of the proceedings as such Executor together with its petition praying for a judicial settlement thereof, and process having been thereupon duly issued, pursuant to statute, directed to all persons interested in the estate of said deceased, requiring them to show cause before this

Court at the Court House thereof on the

28th day of July, 1975, at 10:00 o'clock in the forenoon of that day why the said account should not be judicially settled, and said proces having been returned with proof of service thereon on Evelyn R. Schanbarger and an admission of service of citation having been duly executed and filed on behalf of Donald Schanbarger, and the Executor having appeared by Jack Manley, of Carter & Manley, its counsel, and the said Evelyn R. Schanbarger having failed to appear in person or by counsel on the return day of said process, and the said Donald Schanbarger having appeared in person Pro Se on the return day of said process and having filed objections to said account, and the Court offered the objectant the opportunity to adjourn the proceedings in order to examine the fiduc. iary under oath in reference to the ac-

BARRET LANGE THE PARTY OF

MARINE WINDSHIP BARE OF THAT IN THE ER

Tolland and Court Vide by Butterson agent

the process of the process of the land

saverag ife or beingsip _ equiple of the

Annual of the to alate and at between the

regulation then be some owner of the said

Court as the Court Bouse there t of the

and the state of t

SCOSE . SZ ATIW

count and the objections filed thereto and the said objectant Donald Schanbarger in open Court thereupon waiving the right to examine the fiduciary and stating he did not desire an adjournment and desired to be heard concerning his objections, and the objectant Donald Schanbarger having thereupon heard by the Court upon his objections to the account, and the Court having directed the fiduciary to file an answer to the objections in reference to the interest of the testator in any real property and otherwise, and the matter having been adjourned until the 19th day of August, 1975, and the Executor having filed its reply to the objections duly sworn to August 11, 1975 and upon filing due proof of service upon the objectant Donald Schanbarger of the Executor's Reply to the objections, and upon the adjourned

, and then by Insected on the parties of the property

Executor having appeared by Jack Manley of Carter & Manley, counsel, and the objectant Donald Schanbarger not then appearing in person or by counsel, and the Court having made and filed its decision herein on August 25, 1975, finding that the objectant Donald Schanbarger has no valid objections to the account of the Executor filed herein and directing the dismissal of the objections filed by said objectant,

The state of the season

the said stand Depot Justonles bles out

on noticely has prejugated and entents

to this or conformal and beforeth privat

NOW, upon motion of Jack Manley, Esq., of Carter & Manley, counsel for the Executors, it is

ORDERED, ADUDGED AND DECREED, that the objections filed by the said Donald Schanbarger, be and the same hereby are dismissed;

AND the Court, after having examined

the said account, now here finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, to-wit:

A SUMMARY STATEMENT of the account of Marine Midland Bank-Central as Executor of the estate of Harriet I. Hendry, deceased, made by the Court as judicially settled and allowed:

The said Executor is chargeable as follows:

With the amount of principal
assets shown in Schedule A \$19,435.18
With increase, as shown by
Schedule A-1 None
With amount of income collect-

ed as shown by Schedule A-2 2,411.27

Total \$21,847.08

The said Executor is credited as follows:

DECREE OF the 19th May of August, 1979; the date on the 1979; the greeness having appeared by Jan's Maniey of Carter & Maniey, country, and the ob-

refring is posson or by coursel, and the

bereto on August 25, 1975, Timbing that

edf to improve da of monthodide biles

bire policeville is a night of the following but to feestern in

. Indias do

NOT, open motion of Just Mailer, Mid-,

at Carter & Manley, sourcel fur the

ORDERST, ASVERSED AND DECREES. Dot the

blaned stau sas go balfi mastesside

to govern sees out he ed . tograteles

AND the Court, after raying examina-

A 18

YI A

FERDER

The Charles and the Charles an

Hommary statement thereof, to-with

To Juscope was to THEMREATE THAMPS A

Series Balling Bankstelling and age

cor of the sature of Service I. Hon-

en room our so commit basement farm

Thewalls has believe withherenty

an alternative of otherwal blan ser.

: AWALES?

STATE OF THE PARTY AND A STATE OF THE PARTY AN

St. 675, C. 1 A stringer or could be seen

With the grape, or all the little

and I - L administra

The Armed Control of the Control of

TALLIA CALL SAN THE SA

THE RESERVE TO SECURE AND ADDRESS OF THE PARTY OF THE PAR

With the amount of Schedule B None

With the amount of Schedule C 951.32

With the amount of Schedule C-1 942.00

With amount of Schedule D 6.023.82

With amount of Schedule E 300.00

With amount of Schedule F None

Total 8,217.14

Leaving a balance in the Execu-

tor's hands of \$13,629.94

AND it appearing that said Executor has fully accounted for all the moneys and property of the estate of the above named deceased which have come into its hands as such Executor, and his account having been adjusted by this Court, and a summary statement of the same having been made as above to be recorded herewith and to be taken as part of this Decree;

AND, the said Executor having filed the receipt of the Treasurer of Herkimer Coun-

ty, sealed and countersigned by the State
Tax Commission, for the sum of \$246.00, in
the amount of estate tax which was found
to be due from and assessed against the
property or interest in property, passing
or transferred from the estate of said
deceased, it is further

With the amount of Schedule E

D alchardas to resome out which

wash the erount of Schedule Co.

E studented in Japanes of the

Water amount of Robotology

Line by the out to observe and to garageous

surved Javoors and how an treaxil Come on

transmiss and . Trail side of bateuths acht

above the be regarded between and up awade

preside of the Treasurer of Hermanic Coun-

catenand plant to trung he malled

14. 14. 10. 11

ORDERED, ADJUDGED AND DECREED, that the said Executor, Marine Midland Bank-Central, be relieved from all liability, personal or otherwise, on account of such estate tax; and it is further

ORDERED, ADJUDGED AND DECREED, that the legacy of \$100.00 bequeathed by paragraph THIRD of the Will to Howard Schanbarger or in event he shall predecease the Testatrix to his distributees in accordance with the provisions of the Decedent's Estate Law, shall be distributed by the payment of the sum of Fifty Dollars (\$50.00) to Evelyn

R. Schanbarger, widow of the said Howard Schanbarger and Fifty (\$50.00) to Donald R. Schanbarger, son and only child of Howard Schanbarger; and it is further

ORDERED, ADJUDGED AND DECREED, that said Executor retain the sum of \$873.88 for the commissions to which it is entitled, and it is further

ORDERED, ADJUDGED AND DECREED, that the sum of \$325.00 is hereby allowed to Carter & Manley, counsel for the said estate and Executor as part of the taxable costs and disbursements of the accounting proceeding herein which shall be paid by the Executor herein;

AND, it appearing that the balance in the hands of the Executor, and the expenses and allowances herein provided are recapitulated as follows:

Balance in the Executor's

to, 'scaled and complementaries but before the

HYMSEC

Linux of device and states to theme and

and the last transfer has been party and of of

bles to states out out formatainers to

THE CONTRACT OF THE PARTY OF TH

THE CONTRACT OF THE PARTY OF TH

nows to inverse as assistance to later against

outs worth financials and market state than

AND IN A SECOND CONTRACT OF THE PART OF TH

adi di la construccion di necessaritate in di es-

wed winted attrabered out to menature

shall be distributed by the payment of the

age at Fifty Bollane (650 00)

LESS: Legacy to Evelyn

R. Schanbarger 50.00

Legacy to Donald

Schanbarger 50.00

Executor's Com-

missions 873.88

Allowance to

Carter & Manley 325.00

Total 1,298.88

Balance \$12,331.06

Leaving a balance in the hands of the Executor of \$12,331.06 for distribution; it is further

ORDERED, ADJUDGED AND DECREED, that the said Executor after making the deductions and payments aforesaid dispose of the balance of \$12,331.06 then remaining by paying to the following named persons the sums set opposite their respective

blessed of (05 det) while bas, repassantal

R. Schoolserer, so the selly chille of

Toward Southbard on a 14 are the bad-soud baseoff

AS CTOS to our our plates interest bins

-2 for all to dollar or sentendence out tot

tled, and it is lurther one uncourse the tile

mum or \$50,0,00 to seeby allowed to Carter

the bearing and the second of the second

dispurpaments of the second-leg promotes

and one as blog of Plants decime also at the

Seator bereing

AND, it appropriate this the beishore it.

the hand, or the Executor, and the ex-

penson and allowings herein provided and

receptoulated or followers.

a solution and all annulation

names, which said sums are hereby judged to be the amounts due said persons respectively, on this accounting:

To Evelyn R. Schanbarger,

two-thirds of residue

\$8,220.70

To Donald Schanbarger, one-

third of residue

\$4,110.36

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon making the payments aforesaid and taking and filing receipts thereof, the said Marine Midland Bank-Central be and it hereby is released and discharged from all further liability and responsibility as such Executor and as to all matters embracecd in this account and determined by this Drecree.

ENTER

Leaving a believed in the

30.165,274 To be been to be and the times.

April 23, 1976

/s/ Albert W. Schneider Albert W. Schneider

Surrogate

788

comment. which call nows als recent them a

to he the meaning due sail need on of

AL ULL. 16 SWEEPING TO BELSE

atalogas and the line of the frage bigger of

AMEL ON LINEA

THE UNDOUGH OF THE PARTY OF THE

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DE-

PRESENT: MARSH, P.J., MOULE, CARDAMONE, SIMONS, GOLDMAN, JJ.

In the Matter of the Account of Marine Midland Bank-Central as Executor of the Estate of Harriet I. Hendry a/k/a Harriet E. Hendry, Deceased.

Donald Schanbarger, Appellant,

-VS-

Marine Midland Bank-Central (Executor), Respondent.

Donald Schanbarger, a residuary legatee in this proceeding, having appealed to this Court from a Decree of the Surrogate's Court of the County of Herkimer, made and entered on April 23, 1976 and the said

TOPRING COURT OF THE STATE OF NEW YORK

TRANTE

TANGERS OLD HERAM .THERENT.

BIMOTE, GICINAN, 10.

Widlend Bark-Control on Exceptor of the

TOTAL AND THE T HAVE AND TO SERVE

wast E. Hendry, Decembed.

Bonnid Schunbarger, Appellant,

-5V-

Crowners to the track and beat and were at

. Jasbacqesi

Bornald Submanharger, warning and administration

this presenting, harden appealed to

a riegorus estre E e arts laper are

Court of the Courty of Legislate, cate

Wind and Street St. 1976 as Decided Law

appeal having been submitted by Donald Schanbarger, the appellant, and by Jack Manley of counsel for the respondent, and due deliberation having been had thereon,

It is hereby ORDERED, That the Decree so appealed from be, and the same hereby is unanimously affirmed without costs for the reasons stated in the Memorandum of Herkimer County Court Surrogate's Court, Schneider, S.

Entered: December 10, 1976

/s/ Mary F. Zoller

MARY F. ZOLLER, Clerk

STATE OF NEW YORK, COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-ninth day of March A.D. 1977

PRESENT, HON. CHARLES D. BREITEL, Cheif Judge, presiding.

4 No. No. 228

appeal haring been substitled by Dorallo

walled of world by

In the Matter of the Judicial Settlement of the Account of Marine Midland Bank-Central, as Executor &c. of Harriet I. Hendry &c., Dec'd.

Donald Schanbarger,

Appellant,

VS.

Marine Midland Bank-Central (Executor),

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause hav-

ing heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Joseph W. Bellacosa
Joseph W. Bellacosa
Clerk of the Court

A

STATE OF SEW TORH, COURT OF APILE OF PARTS AND AUTO OF THE COURT, held at the Court of Appeals Hell to he Court

of Albany on the twenty-list day

of March A.B. 1977

PARSENT, HOM CHARLES D BREITEL, Chely

Junge, presiding.

BSS OK .OU.

in the Marter of the Judicial Dettilement

of the Account of Marine Midwell Park

I delived to . od polysex as . fartnet

Hendry &c., Dep'd.

Denald Hebanbarger.

Appullagga

.SV

Marine Midland Sank-Centers, (Executor),

Respondent,

A spirou for leave to oppeal to the

was cause evade out as almost to fee th